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NO. 81-5257

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1981

JAMES CHARLES SCOTT,

APPELLANT

- vs -

COMMONWEALTH OF VIRGINIA,

APPELLEE

ON APPEAL FROM THE SUPREME COURT OF VIRGINIA

JAMES CHARLES SCOTT
APPELLANT, IN PROPRIA PERSONA

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## QUESTIONS PRESENTED FOR REVIEW

1. Whether the Statute of the Commonwealth of Virginia challenged herein violates the Appellant's Inherent Right of Privacy.

2. Whether the evidence presented by the Commonwealth of Virginia was sufficient to establish CORPUS DELICTI

3. Whether under the totality of the circumstances the Appellant was accorded due process of law and an equal protection of the law.

# INDEX


Questions Presented for Review..... 1

Opinion Below..... 2

Jurisdiction..... 2

Constitutional Provisions Involved..... 2

Statement of the Case..... 3

Reasons for Reversing the Judgment..... 6

1. Appellant's inherent right to privacy is violated by Appellee's sodomy statute and the judgment of at least one other state court of final appeal conflicts with that of the Appellee's.

2. The opinion of the Supreme Court of Virginia is predicated upon the erroneous assumption that the evidence establishes a CORPUS DELICTI.

3. The willingness of trial court to reach a judgment of guilt after hearing Appellee's only witness; the granting of total immunity to one alleged co-participant; the use of a coerced statement, since repudiated, by Appellee in trial procedures; misconduct of arresting officer; concealment of fact Appellee's only witness gave statement to police in conflict with testimony--all these combined to deprive Appellant of DUE PROCESS OF LAW and an EQUAL PROTECTION OF THE LAWS.

Conclusion..... 38

| | | |
|---|---|---|
| Appendix A - | Opinion Confirming Conviction..... | |
| Appendix B - | Statement of Donald R. Hanes..... | 14,24,33 |
| Appendix C - | Statement of James Charles Scott..... | 14,24,25,26,33 |
| Appendix D - | Statement of William P. Metheny..... | 4,5,14,17,24,25 33,34,35 |
| Appendix E - | Statement of Mary (Benge) Utley..... | 31 |
| Appendix F - | Extract from Police Interrogation without counsel on 6 December, 1979..... | 4,14,18,19,21 28,29,34 |
| Appendix G - | Extract from Police Interrogation without counsel on 16 November, 1979..... | 19,21,32 |
| Appendix H - | Statement of John Sheridan..... | 15,17,19,22,26 31 |
| Appendix I - | Statement of Clare Ohler, aka "Candy"..... | 4,5,15,17,19,21, 22.26.29,30 |
| Appendix J - | Statement of Teresa Steele..... | 4,5,15,19,21,22 26,29 |
| Appendix K - | Potomac News Article of 20 November, 1979. | 32 |
| Appendix L - | Potomac News Article of 6 December, 1979. | 32 |
| Appendix M - | Editorial Page, Potomac News 6 August, 1980.. | 10 |
| Appendix N - | Norman Tarrant, Potomac News, August1980.. | 10 |
| Appendix O - | Potomac News Article of 5 August, 1980..... | 25 |
| Appendix P - | Civil Action filed by James Charles Scott.. | 14,17,24,33 |
| Appendix Q - | News Artic' , Fredericksburg, Virginia free Lance-Star of 10 July, 1980..... | 4,15,19,38 |
| Appendix R - | Motion filed in U. S. District Court, Eastern District of Virginia 27 January 1980. | 24,25 |
| Appendix S - | Petition for HABEAS CORPUS filed in Smythe County, Virginia Circuit Court, 13 February, 1980..... | 24,25 |
| Appendix T - | Statement of Marvin Timothy Benge..... | 33 |


CASES CITED:


| | |
|---|---|
| ACCORD DOE v. BOLTON 413 US 139 (1973).... | 12 |
| BRADY v. MARYLAND 373 US 83 (1963)..... | 20,24 |
| COMMONWEALTH v. BONADIO 415 A. 2d 47 (Pa. 1980)..... | 13 |
| CLEEK v. COMMONWEALTH, 165 Va 697, 698, 181 S. E. 359, 360 ET AL..... | 16 |
| DOE v. COMMONWEALTH'S ATTORNEY FOR CITY OF RICHMOND, 403 F. Supp. 11999 | 11,13 |

(1975), Afrmd 423 US 901 (1976)..... 11,13

EDWARDS v. ARIZONA, (S. Ct. No. 79-5269, May 18, 1981)..... 34

EISENSTADT v. BAIRD, 405 US 438 (1972)..... 12

FARETTA v. CALIFORNIA, 422 US 806, 835 (1975)..... 24

GRISWOLD v. CONNECTICUT, 381 US 479 (1965)..... 12

HAMILTON v. COMMONWEALTH, 163 Va 1089, 177 S. E. 847..... 17

HERRON v. COMMONWEALTH, 208 Va 326, 157 S. E. 2d 195 (1975)..... 17

JONES v. COMMONWEALTH, 103 Va 1012, 1019, 49 S. E. 663..... 17

LOVISI v. SLAYTON, 36 F. Supp. 620 (1973), Cert. Den. 429 US 977 (1976)..... 12

MOORE v. COMMONWEALTH, 132 Va 741, 745, 111 S. E. 128..... 16

NAACP v. ALABAMA, 377 US 288 (1964)..... 12

NEMETZ v. IMMIGRATION AND NATURALIZATION SERVICE, 4th U. S. Circuit Court of Appeals (No. 80-1289, April 24, 1981)..... 13

PHILLIPS v. COMMONWEALTH, 202 Va 207 (1960)..... 16

PEOPLE v. ONOFRE, 49 USLW 2421 (New York, 1980)..... 13

PEOPLE v. SCHWARTZ, Superior Court of California, Los Angeles County, (September 11, 1972)..... 13

RAVIN v. STATE, 537 P. 2d 494 (Alaska 1975).. 13

ROE v. WADE, 410 US 113, 153, 169 (1973)..... 11,12

SHAD v. MT. EPHRAIM, (S. Ct. 79-1640 (1981)). 12

STANLEY v. GEORGIA, 394 US 557 (1972)..... 12

THOMPSON v. LOUISVILLE, 362 US 199(1960). 22

TONG'S CASE, Kelying 17, 18, 84 Eng. Rep. 1061, 1062 (K. B.) (1663)..... 16

UNITED STATES v. DOE, Cr. Nos. 21860-71, 37025-72, (Superior Court, District of Columbia 21 February, 1973)..... 13

UNITED STATES v. ORITO, 413 US 139 (1973).. 12

WADMAN v. IMMIGRATION AND NATURALIZATION SERVICES, 329 F. 2d 812 (1964)..... 13

STATES CITED:

Illinois, Indiana, Connecticut, Oregon, Colorado, Hawaii, Delaware, Ohio, North Dakota, California..... 12,13

STATUTES:

Title 18 U.S.C. Section 1385..... 27

Title 39 U.S.C. Section 410..... 32

Title 39 U. S. C. Section 412..... 32

1950 Code of Virginia, as amended, Section 18.2-361..... 8,10

OTHER AUTHORITIES:

The Declaration of Independence..... 6

Holy Bible, Old Testament, Leviticus 18:22 and 20:13..... 13

Kinsey, Pomeroy, Martin, Library of Congress No. HQ18-USK5..... 9,11,19

72 Mich L. Rev. 1613 (1975)..... 11

5 M. J., Criminal Procedure, 54, pp 400, 401.. 16

Richards, Unnatural Acts and the Constitutional Right to Privacy; A Moral Theory, 45 Fordham L. Rev., 1281, 1303..... 10

1, Starkie on Evidence, 510 17

Tribe, American Constitutional Law, p. 946.... 10

2 Wharton, Criminal Evidence (12th Ed.) 393 p. 330..... 16

Wilkinson and White, Constitutional Protection for Personal Lifestyles, 62 Cornell L. Rev. 563..... 10

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COMMONWEALTH OF VIRGINIA,

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ON APPEAL FROM THE SUPREME COURT OF VIRGINIA

The Appellant, James Charles Scott, respectfully prays the Court accept his appeal and review the judgment of the Supreme Court of Virginia entered on March 18, 1981.

## OPINION BELOW

The Supreme Court of Virginia entered its opinion affirming the conviction of Appellant on March 18, 1981. A copy of the Opinion is annexed as Appendix A.

## JURISDICTION

On March 18, 1981 the Supreme Court of Virginia entered judgment affirming the conviction of the Appellant for sodomy in violation of Section 18.2-361, 1950 Code of Virginia, as amended. The jurisdiction of this Court is invoked under Title 28 U.S.C. Section 1257(2).

## CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment V:

> No person shall. . . be compelled to be a witness against himself, nor be deprived of life, liberty or property, without due process of law.

United States Constitution, Amendment XIV:

> . . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of

> life, liberty, or property without due process of law; nor deny to any persons within its jurisdiction the equal protection of the laws.

United States Constitution, Amendment I:

> Congress shall make no law regarding an establishment of religion,. . . or the right of the people to peacefully assemble. . .

United States Constitution, Amendment IV:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause. . .

United States Constitution, Amendment VI:

> . . . the accused shall enjoy the right to a speedy. . . trial. . . and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsary process for obtaining witnesses in his favour, and to have the assistance of counsel for his defense.

United States Constitution, Amendment VIII:

> Excessive bail shall not be required. . . nor cruel and unusual punishments inflicted.

United States Constitution, Amendment IX:

> The enumeration in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

## STATEMENT OF THE CASE

In 1979 Appellant formed Cheyenne Custodians, with himself as sole owner. In that capacity, operating out of his home, he employed a number of young people, female and male, including teenagers, as part-time employees. Appellant was, in the course of operating his business, forced to discharge a number of people for various reasons, including theft from his clients and non-performance of assigned duties. Appellant was returning the greater portion of his net proceeds to his business to purchase equipment necessary to a constantly expanding business.

(R. T. p 73 at 22, 23; p 74 at 1-9)

On 15 October, 1979 Appellant took lease on a seven room unfurnished house with enclosed porches and large basement garage. Appellant then proceeded to extensively and expensively furnish this house and used major portions of it to operate his business and for equipment storage. On 21 October, 1979 one Lee Untercoffer, a young man Appellant had known for many months, whom Appellant knew to be of homosexual bent, appeared at Appellant's home, explained that he had had a terrific fight with his father and had no place to stay or money to rent a place to stay. Untercoffer asked if he could stay at Appellant's house, offering to pay (if necessary), help Appellant in his business, help Appellant arrange house and help maintain it and to engage in sex with Appellant. Appellant, being short-handed and Untercoffer being an acquaintance and quasi-friend, accepted this offer, excepting the sexual offer. (R. T. p 60 at 14-23; p. 61 at 1, 2; p. 62 at 10-23; p. 63 all; p. 64 all; p. 65 all; p. 66 at 1-10; p. 73 at 15-18).

Although not offered at trial Appellant interjects his statement to investigator W. P. Metheny that on the evening of 20 October, 1979 Appellant was awakened by Lee Untercoffer performing fellatio on him and that he stopped this act and informed Untercoffer that if he (Untercoffer) could not respect Appellant's wishes on the matter he would have to leave. (Appendix D at J; Appendix F at B; Appendix Q).

On 25 October, 1979 the Appellant, Untercoffer, and a woman known as "Candy" and her 14 year old daughter spent the afternoon and evening until about 10:30 PM at the Appellant's home hanging drapes and laying rugs. Untercoffer took the ladies home and Appellant never again came face-to-face with Untercoffer until Appellant's preliminary hearing on 2 April, 1980 (R. T. p. 68 at 22, 23; p. 69 at 1-23; p. 70 at 1-5; p. 72 at 13-17) (Also Appendix I and J)

At about 10:30 PM, 26 October, 1979 Appellant was awakened by a noise at his home and investigated. Appellant saw Untercoffer's station wagon leaving Appellant's driveway, found a number of items

missing and called police. An officer arrived at Appellant's home and Appellant accused Untercoffer of grand theft and stated he wanted a warrant to issue. Appellant twice called police attempting to obtain warrant for Untercoffer. (R. T. p. 70 at 19-23; p. 71 at 1-23; p. 72 at 1-10).

Investigator W. P. Metheny, already investigating Appellant in connection with some "possible" crime assumed investigation of Appellant's theft report. (R. T. p. 47 at 20-23; p. 49 all; p. 72 at 1-10; p. 76 at 8-23; p. 77 1, 2).

At this point there is an error in the testimony (R. T. p. 49 at 5-6). The officer who took Appellant's complaint at Appellant's home on 26 October, 1979 would have, under prevailing police procedures, written that report on 27 October, 1979 not 27 November, 1979 as witness testified. Appellant could not have summoned police to his home on 26 November, 1979 as Appellant was incarcerated in the Prince William County jail and had been so continuously since 15 November, 1979.

On 8 November, 1979 W. P. Metheny, investigating the Appellant's background, not Appellant's theft charge against Untercoffer, and by promising immunities obtained a statement from Untercoffer that Appellant and Untercoffer had engaged in both oral and anal sex on numerous occasions. At Appellant's preliminary hearing (not recorded) Untercoffer testified that he (Untercoffer) and the Appellant had engaged in intercourse, oral and anal, on several occasions. (Appendix D at E; R. T. p. 46 at 20-23; p. 47 at 1-19; p. 27 at 21-23; p. 28 all; p. 30 at 1-16).

At Appellant's trial on 31 July, 1980 Untercoffer after first putting on great show of reluctance to testify in open court (contradicted by his willingness to freely testify in an open court at Appellant's preliminary hearing with reporters present) obtained total immunity (R. T. p. 11 at 14-23; p. 15 at 20-22; p. 18 at 3-23; p. 19 all; p. 20 all) and testified that he and Appellant had engaged in sodomy 4 or 5 times

(R. T. p. 11 at 7-11) and then contradicted his own testimony and stated, "only did it twice" (R. T. p. 22 at 18, 19) alleging only anal sodomy; and this was in contradiction to statement made to police on 8 November, 1979, and this contradiction was concealed from defense. Untercoffer also seemed terribly confused as he could not remember whether this momentous act occurred by day or night (R. T. p. 22 at 2).

On 31 July, 1980 the trial court, unable to reach a judgment, took the case under advisement. In the interim the court, with same judge presiding, took a second and final sodomy charge into its hearing and dismissed that charge when Commonwealth's only witness was unable to describe interior of Appellant's living room (where act was alleged to have taken place), did not know what street Appellant lived on (witness' uncle lived three houses away, same side, same street and Appellant had purchased large red/rust Doberman Pinscher from witness' uncle two weeks prior to alleged crime), and stated alleged crime took place in spring, 1979 while indictment and warrant read 6 November, 1979. (Sentencing R. T. p. 19 at 5-11).

On 13 August, 1980 trial court found Appellant guilty and on 19 September, 1980 court sentenced Appellant to two years in the Virginia penitentiary, suspended same except ten months served awaiting trial and sentencing (Sentence R. T. p. 28 at 1-6). Appellant then advised trial court that he (Appellant) was bankrupt (Sentence R. T. p. 28 at 23; p. 29 at 1) and it is from this sentence that he appeals.

## REASONS FOR REVERSING JUDGMENT

1. Virginia's Sodomy Statute is an invasion of the inherent privacy of the home and also denies an EQUAL PROTECTION OF THE LAWS.

WE HOLD THESE TRUTHS TO BE SELF-EVIDENT, THAT ALL MEN ARE CREATED EQUAL. . . .

With these noble words our forefathers declared this nation

to be free of a tyranny. What is equality? It is the right to be treated with an equal application of the laws. It is the right of ALL citizens to be equally free to pursue their happiness; to express themselves; to freely peacefully assemble; to be equally free from all unwarranted governmental intrusion so long as while pursuing their happiness, or lifestyle, they do no harm to others, or deny to others these same rights.

This has not always been the case. Only after a long and ardous struggle, with the court leading the way and casting aside its own personal prejudices in favor of rule by law, has legal discrimination, sanctioned by law, against the blacks and other color and racial minorities; against the jews and catholics and other religious minorities; against the Irish and other national minorities; against women by reason of their sex; and by reason of a citizen's age, been voided. We come now to perhaps the last discriminatory legal frontier--the right of sexual preference. The right of control of one's own body in the choice of a sexual partner and the act of making love, rather than having that choice and those acts dictated by the state.

Believing there must be something basically wrong with the law of any state which would hold liable to fine and imprisonment over eighty-two percent of its population for their sexual acts committed in privacy Appellant disregards the fact he had advised his counsel not to pursue this line of defense as well as his own personal and religious convictions. Assuming only for the sake of argument that such an act was perpetrated--was it illegal? Has the state any compelling interest in dictating what consenting knowledgable adults may do sexually in private? Appellant protests the answer must only be NO!

Appellant concedes and even urges the state may say certain acts may not be done in public. The people have every right not to be a captive audience, forced to view certain things. Equally so, if force is used, or with a minor or if, under the circumstances, another cannot give knowledgeable consent; but there are other laws which

govern here.

Section 18.2-361, 1950 Statute Code of Virginia, as amended, dictates that only what is laughingly referred to as the "missionary" position by some cultures may be employed while engaged in sex. This statute proscribes certain sexual conduct between knowledgable consenting adults, even if married; under any circumstances in any locale. Yet it does not forbid mutual masturbation by members of the same sex or the use of an artificial male organ, (DILDOE-purchasable in any adult book store) by two women (lesbians) during the love act, which is certainly homosexual. This statute is unconstitutional on its face. If a person's home is their castle this is unwarranted intrusion. It is oppressive. It is discriminatory. The state's interest must stop at the living room door. It is violative of the First Amendment's right to peacefully assemble; the Fourth Amendment's right of privacy; the Fifth and Fourteenth Amendments' due process clause and the fourteenth's equal protection of the laws. This is not "1984"--the people should not have to so regulate their private lives lest BIG BROTHER is watching.

In the present case the state would have it that it's witness, Lee Untercoffer, granted full immunity, feeling in the need of some police favor, waived his privacy. That may be true, but there is no indication the Appellant even waived his. There was no complaint ever made by the alleged co-principal, only a complaint by a police officer intruding upon the Appellant's privacy, and an unlawful intrusion at that Appellant contends--there being no legal basis for a police investigation of Appellant. Exactly what crime was the state controlling in the present instance? What marriage was the state protecting? Police Investigator William P. Metheny demeaned the state by lowering it to the status of a common peeping tom.

Appellant cannot argue that confining homosexuals with members of their own sex is a cruel punishment; but it is facetious

and self-defeating. You cannot cure a dog of killing chickens by locking him in the henhouse. Neither do you control crime by threatening over eighty percent of the citizens (heterosexual and homosexual) with imprisonment. You only make criminals out of otherwise law-abiding citizens. Sex is here to stay despite the strenuous efforts of some misguided groups to suppress it.

"If all persons with any trace of homosexual history, or those who were predominatly homosexual, were eliminated from the population today, there is no reason for believing that the incidence of the homosexual in the next generation would be materially reduced. ". . . "The evidence that we now have on the incidence and frequency of homosexual activity indicates that at least a third of the male population would have to be isolated from the rest of the community, if all those with any homosexual capacities were to be so treated. " (Kinsey, Pomeroy, Martin, Sexual Behavior In The Human Male--Library of Congress No. HQ18-U5K5 at pp. 665, 666). With at least 37% of the male population having homosexual experiences (Kinsey, Pomeroy, Martin at p. 623) we have an impressive figure to begin with; to this we must add 77% who have had heterosexual oral stimulation of the genitalia experiences, add now the 90 odd percent who have, at some time, masturbated (forbidden in some states) we arrive at: . . . "It is, in fine, a proposal that 5 percent of the population should support the other 95 percent in penal institutions. " (Kinsey, Pomeroy, Martin at p. 392). In other words, 37% could be penalized for having had at least one homosexual experience; 77% could be penalized for having had oral heterosexual experiences, and 95% have masturbated. The only ones to come out ahead on that deal would be those contracted to build the prisons, if they themselves could stay out of prison long enough to get the job done. Lest the married heterosexuals feel slighted we see that at least 59% of them would be there.

". . . Throughout vertebrate sexual behavior there is such a close tie-up between oral eroticism and genital stimulation that oral

activity of any sort must be accepted as a biologically normal aspect of sexuality. . . " (at p. 510). So much for the terms "unnatural" or "usual" acts. ". . . It is difficult to imagine anything better calculated to do permanent damage to the personality of an individual. . . " (at p. 514) (Kinsey, Pomeroy, Martin, Sexual Behavior In The Human Male, Library of Congress No. HQ18-U5K5, especially at pages 96, 136, 140, 146, 224, 225, 368, 370, 384, 391, 457, 497, 498, 510, 514, 616, 617, 623, 624, 628, 632, 633, 650, 664, 665, 666).

We live in a time of changing moral standards. What would have sent us frantically running for the bag of feathers and bucket of tar a hundred years ago merely causes a lifted eyebrow and a shrug today. The PILL and free love; the casual drifting of heterosexuals in and out of brief love (sex) affairs is accepted. Why not the private sexual affairs of both heterosexuals and homosexuals? See--Wilkinson and White, Constitutional Protection for Life Styles, 62 Cornell L. Rev. 563; Tribe, American Constitutional Law, p. 946; Richards, Unnatural Acts and the Constitutional Right to Privacy: A Moral Theory, 45 Fordham L. Rev., 1281, 1303; Editoral, The Potomac News, annexed in its entirety as Appendix M ; Norman Tarrant, in The Potomac News, annexed in its entirety as Appendix N .

Why should not homosexuals, as well as all heterosexuals, married or unmarried, be allowed to peacefully assemble in private and freely express themselves as guaranteed by the First and Fourth Amendments? Only such people as the high school principal who publicly burned a copy of the National Geographics because it was not condusive to a "Christian life" (whatever that term may mean) would intrude.

True, a great many homosexuals are offensive exhibitionists; but so are a far greater number of heterosexuals. Some homosexuals are sexual psychopaths--the same is true of heterosexuals. Mental illness is no respecter of sexes or sexual preferrences. The average human will instinctively seek privacy for the sexual act. The average homosexual and heterosexual is not an exhibitionist; a perverted

chaser of children; a person who gets his sexual thrills from forcing another to engage in sex. The average person simply wants to be left alone to pursue their own particular lifestyle. The Appellant in the course of preparing this appeal, corresponded and talked with dozens of people, in all walks of life, and almost without exception the answer was, in the words of one person, "The state has no d. . . . d business telling me what to do in my own bedroom."

The Appellees may contend they are controlling crime. Appellant begs to ask what crime they are controlling? There is absolutely no evidence that controlling the private sexual lives of the people in any way lessens crime. The several states who no longer try to dictate private sexual conduct have not shown a marked increase in crime. If anything, crime has decreased. They no longer waste the time of their already overburdened police, courts and penal system with senseless prosecution of the citizens for their "crimes" committed consensously in private.

Granted the state may intrude upon privacy if certain conduct has a potential for doing harm as in Roe v. Wade, 410 US113 (1973); but it cannot be shown that the consensual violation of Section 18.2-361, 1950 Code of Virginia, as amended, has any potential for doing harm. (See 72 Mich. L. Rev. 1613 (1975) for discussion on the lack of empirical data on the adverse effect of homosexuals on social system).

Appellant offers the opinion of Mehridge, Judge, writing in dissent, in Doe v. Commonwealth's Attorney For City of Richmond, 403 F. Supp. 1199 (1975), Afmd 425 US 901 (1976)--". . . To suggest, as defendants do, that the prohibition of homosexual conduct will in some manner encourage new heterosexual marriages and prevent the dissolution of existing ones is not worthy of judicial response. In any event, what we know as men is not forgotten as judges--it is difficult to imagine any substantive number of heterosexual marriages being in danger of dissolution because of the private sexual activities of homosexuals. . ."

Would be keepers of the public morals will scream that it is indecent. Possibly, but the court held in Stanley v. Georgia, 394 US 557 (1969), that socially condemned activities, except that of demonstratable external effect, is and was intended by the constitution to be beyond the scope of state regulation when conducted within the privacy of the home. In United States v. Orito, 413 US 139 (1973) ". . . the constitution extends special safeguards to the privacy of the home. . .". Similarily, in NAACP v. Alabama, 377 US 288 (1964) the court held ". . . government purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms. . ." Is nude public dancing (Shad v. Mt. Ephraim (S. Ct. 79-1640 (1981) to be considered morally acceptable and consexual sexual conduct in private not to be?

In Griswold v. Connecticut, 381 US 479 (1965) a zone of privacy was established for married persons. This was seemingly re-inforced in Lovisi v. Slayton, 36 F. Supp. 620 (1973), Cert. den 429 US 977 (1976), although it was held the Lovisi's had waived their privacy by inviting a third person intruder and photographing their acts. In Eisenstadt v. Baird, 405 US 438 (1972) this zone was extended to non-married persons.

The Court has consistently held that the DUE PROCESS CLAUSE of the Fourteenth Amendment linked to the Fourth Amendment's privacy clause protects the right of the individual to be free of unwarranted intrusion to make unencumbered choices in the conduct of their private sexual lives. Roe v Wade 410 US 113, 153, 169 (1973); Accord Doe v. Bolton, 410 US 179 (1973); Griswold v. Connecticut, 381 US 475 (1965); Eisenstadt v. Baird, 405 US 438 (1972); Stanley v. Georgia, 394 US 557 (1972).

At least ten states have decriminalized consensual sodomy conducted in private--Illinois, Indiana, Connecticut, Oregon, Colorado,

Hawaii, Delaware, Ohio, North Dakota and California. The highest courts of appeal in at least three other states have struck down their state statutes as being unconstituional--Pennsylvania (Commonwealth v. Bonadio, 415 A 2d 47 (1980); Alaska (Ravin v. State, 537 P 2d 494 (1975); New York, with no dissenting votes (People v. Onofre, 49 USLW 2421 (1980). Other courts have so ruled--People v. Schwartz, Superior Court of California, Los Angeles County (September 11, 1972); United States v. Doe, Cr. Nos. 21860-71, 37025-72, Superior Court, District of Columbia (February 21, 1973).

The Fourth U. S. Circuit Court of Appeals, citing a Ninth U. S. Circuit Court of Appeals decision (Wadman v. Immigration and Naturalization Service, 329 F. 2d 812 (1964) held in Nemetz v. Immigration and Naturalization Service, No. 80-1289 (April 24, 1981) that violation of Commonwealth of Virginia's Sodomy Statute was not proof of immoral conduct, absent a showing of public indecency and harm, and therefore no bar to U. S. Citizenship.

Trial Court held Doe v. Commonwealth's Attorney for City of Richmond, 403 F. Supp. 1199 (1975) Afm'd 425 US 901 (1976) was definitive decision. That case heard by U. S. District Court, Eastern District of Virginia (Mehridge, Judge, in dissent) was the subject of serious jurisdictional question in which even Judge Mehridge concurred; but the decision was fatally flawed by the reliance of the majority of the court on certain passage of the Old Testament of the Judeo-Christian Bible to substantiate their decision and was therefore in direct conflict with the First Amendment's principle of the separation of Church and State--for what is specifically denied to the Congress must surely also be denied to the courts. These passages were footnoted as Leviticus 18:22 and Leviticus 20:13 (calling for the death penalty, the execution method of the time being stoning) and were first uttered at a time when women were

held in thrall as mere chattels; Jehovah was the only god permitted; a person's social status was determined by the shade of their skin; strangers speaking another language were suspect; and the slave dealer was a charter member of the local Chamber of Commerce.

Sodomy, under Virginia Statute, is a sixth class felony, the bottom rung on the ladder. What was the great compelling interest of the state to bring to trial one alleged participant and grant the other total immunity? A person tarred with the homosexual brush has always been the prey equally of both the police and the criminal. Many a criminal has escaped the justice of his acts of theft, robbery and even murder by claiming the victim was "queer". Such a law leaves the accused homosexual without any legal protection and is a dangerous and capricious weapon in the hands of an overzealous or unscrupulous police official or prosecutor. Again, why was one person threatened with arrest unless he made a statement against Appellant and promised immunity if he did? Is this an EQUAL PROTECTION OF THE LAWS? (See Appendix B ; Appendix C at N ; Appendix D at H ; Appendix P at 4.

In conclusion, the Appellant poses a question for the Appellee. How come, if the Commonwealth of Virginia is so concerned with the private consensual sexual conduct of its citizens and is so adamant in stamping out sodomy of any kind did its agent, William P. Metheny, rush out to obtain a warrant for the Appellant after being told of an alleged act of consensual sodomy between Lee James Untercoffer, Jr. and the Appellant; but took no action whatsoever after being informed by Appellant that Lee James Untercoffer, Jr. had committed an act of sodomy on the Appellant to which the Appellant was neither knowledgeable or consenting? Appellant sincerely hopes Appellee does not attempt to put forth that this is DUE PROCESS OF LAW or EQUAL PROTECTION

OF THE LAW." (Appendix F at B.)

2. The opinion of the Supreme Court of Virginia is predicated upon the erroneous assumption that the evidence establishes a CORPUS DELICTI.

The Appellant offers herein and in Question 3 following certain information for the first time, but only because the information was not known or available, until after Appellant's trial, and some of it not until 10 July, 1981.

A. The uncorroborated word of Lee Untercoffer, a convicted thief, himself granted total immunity, for whom the Appellant was actively trying to obtain a warrant charging grand larceny, and who now stands convicted beyond reasonable doubt of rape, capital murder and arson in the death of his 9 year old cousin (Spottsylvania County (Virginia) Circuit Court, 8 July 1981) and whose testimony in that trial showed had numerous items stolen from his aunt (victim's mother) in his possession at time of arrest and whose own father testified he had ordered his son to leave his home for stealing, was insufficient to establish CORPUS DELICTI in the face of Appellant's vehement denial as supported by the testimony of Paul Meredith (it in turn supported by the sworn deposition of John Sheridan, not available at trial) that Untercoffer had stated to them (Meredity and Sheridan) that he was only testifying to "get out" of his own charges, had made a deal with the arresting officer (William P. Metheny), had never engaged in sex with Appellant, and was testifying against Appellant on a murder charge. (R. T. pp. 54 at 17-23; p. 55 at 12; p. 56 at 5-16; Appendix D at E; Appendix H; Appendix I; Appendix J; Appendix Q.)

B. The confessional, or statement, of Lee Untercoffer to police was in no way binding upon the Appellant, being made out of Appellant's hearing. "Defendant's conviction could not be sustained

where the corpus delicti was proven only by his extra judicial confession." "The separate confessions of co-defendants are each admissable only against the defendant who made the confession" (Phillips v. Commonwealth, 202 Va. 207, 116 S. E. 2d 282 (1960).

"Such confession (before a justice or privy councillor on examination) so proved is only evidence against the party himself who made the confession, but cannot be made use of as evidence against any others whom on his examination he confessed to be in treason." (Tong's case, Kelyng 17, 18, 84 Eng. Rep. 1061, 1062 (K. B.) (1663). "The only evidence to sustain Phillips' conviction is his confession and the fact that on August 7 Campbell was in possession of Phillips' car." "His possession of the car is just as consistent with non-commission of the offense as it is with its commission." "In short, there is no evidence that fortifies the truth of the confession as to the CORPUS DELICTI." "The statements made by Campbell to Clendenen and Roark are not confessions of guilt on his part. On the contrary, they are denials of guilt as far as he is concerned." (Phillips v. Commonwealth, 202 Va. 207 (1960). (See also 5 M. J., Criminal Procedure, 54, pp 400, 401). "Even a confession by the accused, which is extra-judicial, that he committed the offense with which he is charged, is not alone and uncorroborated, adequate proof to establish the CORPUS DELICTI." (Moore v. Commonwealth, 132 Va. 742, 745, 111 S. E. 128). "It has long been settled in this state that the CORPUS DELICTI cannot be established by the extra judicial confession of an accused uncorroborated by other evidence." (Cleek v. Commonwealth, 165 Va. 697, 698, 181 S. E. 359, 360 et al and 2 Wharton, Criminal Evidence (12th ed.), 393 P 330). "The rule in criminal cases is that the coincidence of circumstances tending to prove guilt, however strong and numerous they may be

avails nothing unless the CORPUS DELICTI, the fact that the crime has been actually perpetrsted, be first established." (1, Starkie on Evidence, 510; Jones v. Commonwealth, 103 Va. 1012, 1019, 49 S. E. 663; Hamilton v. Commonwealth, 163 Va. 1089, 177 S. E. 847). "Two-day delay in complaint bears on weight to be given but not on admissibility of evidence." (Herron v. Commonwealth, 208 Va. 326, 157 S. E. 2d 195 (1967).

(1) No mention was made of the alleged act by Untercoffer until approximately three weeks later and then only because Untercoffer felt himself to be in need of police favor. (Testimony of Untercoffer; testimony of Meredith; deposition of Sheridan). It was established that Untercoffer was in fact granted total immunity from even arrest for alleged crime of sodomy; had grand larceny charge in Stafford County (Virginia) reduced to misdemeanor and that Appellant, actively seeking warrant, was blocked in his attempts to prosecute Untercoffer for Grand Larceny (Testimony of Untercoffer, Meredith, Metheny, Appellant; depositions of Sheridan (Appendix H ) and Ohler (Appendix I). Contrary to prosecutor's claim that Untercoffer had nothing to gain, evidence shows Untercoffer in fact had everything to gain.

(2) Prince William County Police Investigator William P. Metheny was directly in a conflict of interest having assumed Appellant's complaint against Untercoffer while already investigating Appellant (which Appellant submits was unlawful in origin and illegal in conduct). Appellant submits evidence tends to show Metheny suborned Untercoffer and presents that Metheny has on at least one occasion may have perjured himself when, under oath, he returned to the United States District Court for Eastern District of Virginia that Appellant had never made complaint to him of medical problems (Appendix D at J ) when transcript furnished by Prince William County Police Department shows otherwise

(Appendix F at A); Appendix P at 7.)

(3) Consensual sodomy between consenting adults in private by its very nature presupposes equal guilt by all partipants and the granting of total immunity to one alleged partipant while prosecuting any other to the fullest extent of the law denies DUE PROCESS OF LAW and EQUAL PROTECTION OF THE LAWS.

(4) Appellant, far from admitting guilt, protested his innocence throughout police interrogations and so testified. The mere fact Untercoffer was temporarily residing in Appellant's home and had by Appellant's testimony, offered to engage in sex with Appellant is not a confirmation of the commission of the crime, absent any showing of proof by Appellee, in the face of Appellant's continuous protestation that he had rejected Untercoffer's offer and that when he was awakened by Untercoffer committing FELLATIO on him he had stopped Untercoffer's continuance of that act. Admission that Appellant had had homosexual experiences does not establish CORPUS DELICTI because Appellant had denied any specific knowledgeable act with Untercoffer; in fact rather con-contemptuously referred to Untercoffer's physical appearance; nothing was ever asked concerning what Appellant considered a homosexual experience, whether that experience was a crime concerning Appellant's participation, whether such an experience was with Appellant's knowledgeable consent, age of Appellant at time of experience, whether act was committed in Commonwealth of Virginia. Depositions of two witnesses not called by defense counsel show that Untercoffer was in fact under erroneous impression Appellant had ordered Untercoffer to leave Appellant's home (Appellant had stopped Untercoffer's act of FELLATIO and had said, "If you cannot respect my wishes on sex you'll have to

leave"). To find Appellant guilty based upon an admission that sometime in his distant past he had homosexual experience and had, while incarcerated, been the proven victim of a homosexual assault is equal to finding any defendant guilty of rape on the uncorroborated testimony of an alleged victim merely because that defendant admitted liking girls. Even should a person admit to a homosexual tendency, which Appellant does not, that is no indication that a particular person fills his sexual criterion. Just as hetersexuals have their preferences, so do homosexuals--"Even the more experienced homosexual males may be inhibited from making all the contacts that are available because of preferences for particular sorts of partners." (Kinsey, Pomeroy, Martin, Sexual Behaviour in the Human Male, Library of Congress No. HQ18--U5K5 at p. 632). (See also: Testimony of Appellant; Appendix I; Appendix J; Appendix F at B; Appendix G at D).

(5) Untercoffer, having willingly, without protestation, testified at Appellant's Preliminary Hearing to having had homosexual intercourse with Appellant and that being an open hearing and duly reported in the newspapers sought to enhance his position with an emotional plea that the Court be closed and reporters excluded was merely theatrics which have no place in a court of law. The fact that Commonwealth's Attorney alluded to this in making his summation makes this act unnecessarily prejudicial to the Appellant. Defense counsel should have moved a mistrial and failing that--the Trial Court should have, on its own initiative, ordered a mistrial.

(6) The Appellant was forced to testify by the prejudgment of the Trial Court, which after hearing only the testimony of Untercoffer indicated having already reached a conclusion. (R. T. p. 43 at 22, 23; p. 44 at 1-8).

(7) Appellant, knowing Untercoffer to be bisexual (both

hetero and homo sexual) and himself having extensively traveled and being well read, having long ago adopted a policy of "DeGustibus non disputandus est" towards the private lives of others was quite unaffected by Untercoffer's offer of sex. Should Appellant have regarded Untercoffer as something loathsome and cast him out, thus ending their friendship, merely because he found him to be homosexual? No liberal minded person should be judged by the narrow mores of Prince William County.

(8) The Testimony of Untercoffer is not credible. Testimony at his trial in Spottsylvania County (Virginia) Circuit Court tends to indicate that he is a thief and liar with a vindicative bent who will use any circumstance and will say anything to further his own cause. At every turn his testimony at Appellant's trial is contradicted by the testimony of others, the sworn depositions of others and his own statements and sworn testimony. Untercoffer, an admitted homosexual, would not scruple to commit perjury if he thought it would further his own cause. (Appendix Q).

(a) Untercoffer made a statement to police that he and Appellant had engaged in oral and anal sex on numerous occasions (this statement being concealed from defense (Brady v. Maryland, 373 US 83 (1963), and testified at Appellant's Preliminary Hearing to oral and anal sex on numerous occasions. Yet at Appellant's trial Untercoffer testified only to anal sex 4 or 5 times (R.T. p. 11 at 11) and while stil. on direct examination contradicted himself and said "only did it twice." (R. T. p. 22 at 18).

(b) Commonwealth established date of alleged offense as occurring on 25 October, 1979 (R. T. p. 22 at 12-17) and Untercoffer's testimony seemingly established it as taking place at night (R. T. p. 22 at 2). Untercoffer's testimony is there contradicted by the testimony of the Appellant and the depositions of John Sheridan (Appendix

H.) Teresa Steele (Appendix J) and Clare Ohler (Appendix I. Sequence of events is established by Appellant in the following manner, in reverse order;

(i) 26 October, 1979--Untercoffer not at Appellant's house all day, returns that evening, noise awakens Appellant who sees Untercoffer's vehicle leaving driveway, notices several items missing and calls police. (R. T. p. 68 at 22, 23; p. 69 all; p. 70 all; p. 71 all; p. 72 at 1-17).

(ii) 25 October, 1979--Untercoffer works for Miller and Long until 3:00 PM. Appellant purchases several items (draperies, rugs, etc.) from Zayre's in Woodbridge, Virginia, having to return several items for refund on that date (Assistant Manager offers Appellant refund of 3 times correct amount on one item and Appellant corrects Assistant Manager and refuses incorrect refund) and pays with cheque dated 25 October, 1979; before dark "Candy" (Clare Ohler) and her (then) 14 year old daughter, Teresa Steele, arrive at Appellant's house and spend evening laying rugs and were taken home by Untercoffer who never returned to Appellant's house except to commit theft on 26 October, 1979. (Statement of Ohler (Appendix I); statement of Steele (Appendix H); testimony of Appellant (R. T. p. 68 at 22, 23; p. 69 all; 70 all; p. 71 all; p. 72 at 1-17).

(iii) 24 October, 1979--Appellant awakens to find Untercoffer performing fellatio; advises Untercoffer, "If you can't respect my wishes on sex, you'll have to leave." (Appendix F at B; Appendix G at D). This does not contradict Appellant's testimony (R. T. p. at 17-19) as the sexual relation was strictly one-sided on Untercoffer's part. Appellant was an unknowing subject during this homosexual experience and this was one of the experiences referred to in Appellant's admission of homosexual experience. Appellant, being unknowing and unwilling subject is in no wise prosecutable for this offense.

(c) Untercoffer's testimony that he left Appellant's house because of Appellant's sexual demands (R. T. p. 31 at 18-20) is contradicted by depositions of Clare Ohler (Appendix I) and Teresa Steele (Appendix H). Untercoffer was apparently under impression he had been told to leave.

(d) Untercoffer testified at Appellant's Preliminary Hearing that he, "Only told that story to get out of my own charges". This is supported by Appellant's contention, testimony of Meredith and deposition of Sheridan (Appendix H).

(e) Untercoffer testified he thought alleged offense occurred at night (R. T. p. 22 at 2). Appellant concedes that not everyone is gifted with Appellant's almost eidetic memory and that Untercoffer might have been unable to remember the day of the month or even the day of the week; but to fail to remember whether the alleged offense occurred by day or by night is simply incredulous and not worthy of consideration by a court of law.

(9) Defense had moved, and been granted, separate trials on two charges of sodomy. For the same trial judge to hear the second charge while the verdict in the first was under advisement, even though the second charge was contemptiously dismissed, there being two other trial judges available, had the effect of denying an already granted defense motion to separate the charges and may have adversely, from Appellant's view, affected the verdict.

In summation Appellant presents that the credibility and testimony of Commonwealth's only witness, Lee James Untercoffer, Jr., is completely contradicted and destroyed and should properly be stricken in its entirety; that the Commonwealth fails to establish a CORPUS DELICTI, and submits "there may be no conviction without evidence. . ." (Thompson v. Louisville, 362 US 199 (1960).

3. The willingness of Trial Court to reach a judgment of guilt after hearing Appellee's only witness; the granting of total immunity

to one alleged co-participant; the use of a coerced statement, since repudiated, by Appellee in trial procedures; misconduct of arresting officer; concealment of fact Appellee's only witness gave statement to police in conflict with testimony--all these combined to deprive Appellant of DUE PROCESS OF LAW and an EQUAL PROTECTION OF THE LAW.

A. Trial Court after hearing only the testimony of Lee James Untercoffer, Jr., the Commonwealth's only witness, indicated its willingness to accept the establishment of a CORPUS DELICTI, thereby rendering any testimony or evidence presented by defense futile, denied Appellant the right TO A FAIR AND IMPARTIAL TRIAL, DUE PROCESS OF LAW and an EQUAL PROTECTION OF THE LAW (R. T. p. 43 at 22, 23; p. 44 at 1-8).

B. Failure of defense counsel to move a MISTRIAL and/or failure of trial court to order same after emotional outburst of LeeJames Untercoffer, Jr., that outburst being highly prejudicial to Appellant and such tactics being improper in a court of law, being referred to in Commonwealth's summation, resulted in the pre-judgment referred to in 3A aforegoing and denied the Appellant the RIGHT OF ASSISTANCE OF COUNSEL, A FAIR AND IMPARTIAL TRIAL, DUE PROCESS OF LAW and an EQUAL PROTECTION OF THE LAWS.

C. Trial Court's acceptance of Commonwealth's grant of total immunity to one alleged participant while prosecuting another participant denied A FAIR AND IMPARTIAL TRIAL, DUE PROCESS OF LAW and an EQUAL PROTECTION OF THE LAW.

D. Defense had made a motion for separate trials of two charges of sodomy. Trial Court granted this motion. Trial Court then having already prejudged CORPUS DELICTI in the first trial, took verdict under advisement on defense motion of invasion of privacy. Trial Court then with same judge, presiding, there being

two other judges available, heard second charge of sodomy, while first charge of sodomy was still under advisement. That second charge of sodomy was summarily dismissed does not alleviate fact that trial court's action in effect negated a prior granted motion to separate the charges, there being no hearing to reverse granting of motion of separate trials, and this denied Appellant A FAIR AND IMPARTIAL TRIAL, DUE PROCESS OF LAW and an EQUAL PROTECTION OF THE LAW.

E. Trial Court's refusal to allow defense counsel to withdraw and/or Appellant to discharge counsel after Appellant indicated disillusionment and total disagreement with defense counsel's conduct (Faretta v. California, 422 US 806, 835 (1975) denied Appellant ASSISTANCE OF COUNSEL OF HIS CHOICE, A FAIR AND IMPARTIAL TRIAL and an EQUAL PROTECTION OF THE LAW. (Appendix R; Appendix S).

F. Prince William County Police Investigator William P. Metheny obtained, by intimidation and coercion, a statement, since repudiated, from Donald R. Hanes (Appendix B; Appendix C at N; Appendix D at H; Appendix P at 4) and Appellee used that statement as a basis for part of its trial procedure (R. T. p. 61 at 21) and this denied Appellant a FAIR AND IMPARTIAL TRIAL, DUE PROCESS OF LAW and an EQUAL PROTECTION OF THE LAW.

G. Persons acting as the agents of the Appellee willfully concealed from the defense that the statement made to the police by Lee James Untercoffer, Jr. contradicted his sworn testimony at Appellant's trial within the meaning of Brady v. Maryland, 373 US 83 (1963) and this contradiction was most favorable to the defense as it would have destroyed Untercoffer's credibility, (Appendix D at E) and this denied Appellant A FAIR AND IMPARTIAL TRIAL, DUE PROCESS OF LAW and an EQUAL PROTECTION OF THE LAW.

H. Appellant concedes that perhaps Appellee is correct in ascerting that arraignment after arrest is not an adversary proceeding under normal circumstances; but both the arraigning magistrate and the General District Court by allowing Police Investigator William P. Metheny to make unsworn statements while denying Appellant right of counsel and of cross-examination (Appendix C at C. E; Appendix D at G; Appendix P at 10 denied Appellant RIGHT TO COUNSEL, DUE PROCESS OF LAW and an EQUAL PROTECTION OF THE LAW. It also resulted in an EXCESSIVE BAIL of $15,000.00, especially when a person accused of committing robbery by wraping a chain belt around his victim's neck (a much more serious charge) was released on $5,000.00 bail and the Town Sargeant (Chief Police Official) of the town of Quantico, Prince William County, Virginia was released on a personal recognizance on a charge of sodomy with a minor (Appendix O). This was also violative of the Sixth Amendment as it prevented Appellant from locating two crucial witnesses, Clare Ohler and Teresa Steele. When William P. Metheny, acting as an agent for the Appellee, opened his mouth and uttered the first word both proceedings become adversary proceedings and Appellant was entitled to all constitutional guarantees of an adversary proceeding.

I. Appellant's counsel, Donald Coulter, who Appellant repeatedly attempted to discharge incorrectly represented Appellant:

(1) Caused Appellant, IN ABSENTIA and against his expressed wishes (Appendix R; Appendix S), to be transported to the Southwestern State Hospital at Marion, Virginia for psychiatric evaluation and this denied Appellant A SPEEDY TRIAL, caused Appellant TO BE A WITNESS AGAINST HIMSELF, denied DUE PROCESS OF LAW and an EQUAL PROTECTION OF THE LAW.

(2) Inadequately cross-examined Untercoffer and in-

adequately examined the Appellant.

(3) Appellant informed counsel that two witnesses, Clare Ohler and Teresa Steele, whose correct names were not then known to Appellant, had been in Appellant's home the evening of 25 October, 1979 and that these witnesses resided with Jean McNamara in Staffordshire Trailer Park in Stafford County, Virginia on State Route 610. Appellant also informed counsel that John Sheridan, also a state prisoner, had approached Appellant and told him several things which Untercoffer had stated to Sheridan and Paul Meredith and said he would so testify Counsel made no attempt to locate Ohler and Steele and failed to subpoena Sheridan and several other named witnesses who could testify to Appellant's integrity. This denied Appellant of THE RIGHT TO COUNSEL, THE RIGHT TO CALL WITNESSES IN HIS BEHALF, A FAIR AND IMPARTIAL TRIAL, DUE PROCESS OF LAW and an EQUAL PROTECTION OF THE LAW. (Appendix H; Appendix I; Appendix J; Appendix C at L, M).

(4) Counsel admitted in a hearing before Judge Selwyn Smith that he had willingly failed to comply with Appellant's demands to file a MOTION TO REDUCE BOND.

J. Appellant in June, 1979 formed "Cheyenne Custodians" with himself as sole owner. In that capacity he employed numerous young people, including teenagers, male and female, as part-time employees. As employer Appellant was forced, as in any business, to terminate the employment of a number of employees for a number of legitimate reasons.

In mid-October, 1979 Appellant relocated from an address on Lionsfield Drive to 18601 Amidon Avenue, both being in town of Triangle, Prince William County, Virginia. Appellant then proceeded to extensively and expensively furnish this seven room house and to make extensive purchases of business equipment.

About this time Appellant was informed by Donald R. Hanes that a Kevin Girtz, then employed by Appellant while awaiting an other than Honorable Discharge from the U. S. Marine Corps, had entered Appellant's bedroom and forced the lock on an attache' case containing matters of litigation in the Courts of Ohio in which Appellant was proceeding PRO SE under a legal name other than James Charles Scott. Girtz had then removed those documents and had taken the documents and a glass Appellant had handled and turned them over to the Criminal Investigation Division of the Provost Marshal's Office at Marine Corps Base Quantico for photocopying and development of fingerprint latents in violation of 18 U. S. C. Section 1385. Girtz reportedly stated, "We're going to find out exactly who he is." Prince William County Police Investigator William P. Metheny asked Appellant for his fingerprints on 26 October, 1979, which request was quite properly refused, stating, "We already have the prints of one hand."

Also about this time Appellant, being both an Officer of Triangle Moose Lodge 1956, Chairman of the Children's Christmas Fund and holder of its custodial contract, stopped by the table of Terry Bost (Chairman, Entertainment Committee) and Harry Shockley to conduct Lodge business concerning the Lodge newsletter (Appellant was Editor) and as Appellant left table he heard a third person with whom Appellant had had a number of confrontations and who had severely criticized Appellant because of Appellant's use of blacks and other minorities in his business and who Appellant considered to be a drunk and a pain, say, "The Police are watching every move he makes." Thinking this to be only more of his pettiness Appellant simply ignored the remark.

On 21 October, 1979 Lee James Untercoffer, Jr. an admitted homosexual, who Appellant had known for about a year showed up and asked Appellant if he could stay at Appellant's house

(R. T. - Testimony of Appellant and Untercoffer). Untercoffer offered to engage in sex with Appellant and was refused. On the night of 24 October, 1979 Appellant was awakened by Untercoffer performing fellatio on him and stopped Untercoffer by rolling over and telling Untercoffer, "If you can't respect my wishes on sex, you'll have to leave." (Appendix F at B).

On 25 October, 1979 Clare Ohler (Appendix I) and her (then) 14 year old daughter, Teresa Steele, (Appendix J) arrived at Appellant's house and Untercoffer, Steele, Ohler and Appellant spent evening, until about 10:30 PM, hanging drapes and laying rugs (R. T. Appellant's Testimony). There was no sex involved. Appellant then paid Untercoffer to take ladies home. During this trip Untercoffer, (under a misconception) apparently told the ladies he could not return to Appellant's house as he (Untercoffer) had been told to leave.

On 21 October, 1979 a police snitch (informer) told to stop climbing the fence and crossing Appellant's yard threatened to shotgun Appellant's dogs and house. He was told by Appellant that should he, after making that threat, set foot on Appellant's leased property with a gun in his hand he would be given only one chance to drop the weapon. Appellant called police. On the morning of 23 October, 1979 Appellant was told by his neighbor, Mrs. Chris Allen, that this person had, at about 2:00 AM, showed up with a gun and was estopped from firing only by the fact that he knew Mrs. Allen was watching and that Mrs. Allen heard him say to a companion, "That's OK. We'll do it tomorrow." The following night Appellant, realizing police could not mount a 24-hour guard, mounted armed guard of his house and its human occupants. It is this act of self-defense upon which William P. Metheny based his false assertion that the Appellant was dangerous, an assertion certainly not borne out by Appellant's record.

On the night of 24 October, 1979 Appellant awakened to find Untercoffer performing FELLATIO which Appellant did not allow to continue (Appendix F at B).

On 25 October, 1979 Untercoffer was employed by Miller and Long, contractors of Alexandria, Virgnia. Appellant made numerous purchases of drapes, rugs and related items at Zayre's of Woodbridge, Virginia. When Untercoffer arrived at Appellant's home he proceeded mount a large TV antenna on roof and was still doing that when "Candy" (Clare Ohler) and Teresa Steele arrived. Drapes were hung and rugs were laid until about 10:30 PM when Appellant paid Untercoffer to take ladies home. Untercoffer did not return to Appellant's home after doing this. (Testimony of Appellant; Appendix I; Appendix J).

On 26 October, 1979 a Sargeant Ahrens (spelling uncertain) and William P. Metheny arrived at Appellant's home and asked Appellant to go to the Gar-field sub-station with them. There William P. Metheny accused Appellant of molesting a 9 year old boy on/or about 25 May, 1979. Metheny at this time was fully aware Appellant did not come close to matching description or composite police drawing of the perpetrator of this sick act. Appellant became very angry and left police station. Ahrens and Metheny followed Appellant to his home and asked Appellant to take polygraph test concerning the "Possible Abduction/ Murder" of 9 year old Larry Perry on 27 May, 1979. Appellant agreed and that test showed Appellant knew nothing of this child. Appellant denied then, and does so now under oath, any personal knowledge of the disappearance of Larry Wayne Perry. There was no evidence in police hands to show that this child was abducted and/or murdered and certainly no evidence linking Appellant to the disappearance of this child. This was used by Metheny to illegally pry into Appellant's past to try to find some crime Appellant may

have committed at the behest of certain persons, wholly unconnected with the police, for revenge and personal aggrandizement. Finding Appellant to be just what he presented himself to be, a hard-working, civic-minded, honest businessman. Metheny then proceeded to bring two false charges of sodomy against Appellant. When Appellant, in a face-to-face confrontation, accused Metheny of suborning the charges and knowing his witnesses were lying, Metheny smiled and said, "Maybe so, but can you prove it?".

On the night of 26 October, 1979 Appellant was awakened by a noise, saw Untercoffer's car going out of his driveway, missed several items and called police, accusing Untercoffer, a convicted thief, of grand larceny, attempted to obtain a warrant for Untercoffer then, again about a week later, again on 11 November, 1979 and even after Appellant's arrest. (Testimony of Appellant; Appendix I.

On 15 November, 1979 Sgt. Ahrens phoned Appellant's home asking Appellant to come to Gar-field sub-station to identify certain stolen items. When Appellant arrived he was arrested on charges of sodomy with Untercoffer and a 16 year old male prostitute (this second charge was dismissed when the boy was unable to describe interior of Appellant's living room where act supposedly took place), identify which street Appellant lived on (this boy's uncle lived two houses away on same side of same street; Appellant had recently purchased a large red/rust doberman pinscher from boy's uncle and boy should have know this dog) and stated sodomy took place in spring of 1979. (When warrant read 6 November, 1979). Appellant submits that in light of Metheny's other actions that Metheny coerced both charges, threatening arrest unless statements we re made and granting immunity if statements were made and told these two alleged co-participants that Appellant had abducted and murdered

9 year old Larry Wayne Perry. It is a matter of record that both alleged co-participants as well as Donald R. Hanes were granted immunity, even from arrest, after making statements. How many people was Metheny prepared to grant immunity, half of the County? In his statement to Meredith and Sheridan Untercoffer alludes to having seen Appellant murder a 9 year old boy in October, 1979 (Appendix H; Testimony of Meredith). It is a curous fact that Untercoffer mentions October, 1979 when "Possible Abduction/Murder" took place supposedly on 27 May, 1979. How else could Untercoffer have known Appellant was supposedly being investigated for that crime unless told so by Metheny? Metheny even told Appellant's sister, Mrs. Mary Benge Utley, that Appellant had abducted and murdered a 9 year old child and stated Appellant had been dishonorably discharged from Armed Forces as homosexual, an outright lie without any basis of fact. (Appendix E). Metheny also told Appellant's retained counsel, Colonel James R. Turner, that Appellant was being investigated for murder, forcing Col. Turner to withdraw. Metheny also attempted to influence (and may have done so) Appellant's court-appointed counsel, Donald E. Coulter, by telling him Appellant had confessed. After six months confinement with Metheny thwarting attempts at bail, being homosexually assaulted after advising authorities Appellant was resisting pressure to engage in sex with other inmates, after losing his business and everything he owned, continually pressured by police informants as to what would happen to Appellant in prison, being denied proper medication unless he confessed, and being confined with the dregs of society, who wouldn't make a deal with arresting officer, even though that deal meant telling a lie?

On 20 November, 1979 William P. Metheny, after having

been told by Magistrate Burdette on 15 November, 1979 that the use of more than one name was no crime, or indication of commission of crime, and after having been told by Appellant that "General Chargingwolf" ("General El Lobo Attacar") was both a NON DE GUERRE and a NON DE PLUME, that James Charles was an error Appellant had repeatedly attempted to have corrected, and that Jim was simply the dimunitive of James, caused the advertisement (an an advertisement it certainly is) annexed as Appendix K to be published in the Potomac News newspaper. There can be no doubt in anyone's mind after reading this article that Metheny was openly advertising for charges against Appellant. This was an open invitation for any deranged person, any person wanting to feel important or any person with a grievance, real or imagined, to come forward. Never has the Appellant seen a more openly blatant invasion of privacy. Appellant once heard William P. Metheny referred to by another officer as "Bill" and accordingly urges Metheny be investigated for possible involvement in a crime of some nature.

On 10 December, 1979 William P. Metheny, after being advised by Appellant that he (Appellant) had legally had his name changed (Appendix G supra A; Sentencing R. T. p. 17 at 5-10), caused the news article annexed as Appendix L to be published in the Potomac News newspaper.

By his own sworn admission William P. Metheny did in violation of Title 39 U. S. C. 410, 412 obtain from Andy Thurston, U. S. Postmaster, Triangle, Virginia a listing of Appellant's prior mailing addresses on 25 October 1979; On 24 November, 1979 William P. Metheny obtained a subpoena to examine Appellant's bank account, there being no legal cause for said subpoena to issue; on 30 October 1979 William P. Metheny obtained a subpoena for Appellant's telephone records, there being no legal cause for said subpoena

to issue; William P. Metheny did take unlawful possession of Appellant's personal records and an attache' case containing documents pertaining to matters of litigation in which Appellant was proceeding PRO SE and ought properly have been confidential and privileged and has refused to return same. (Appendix D at C, D, F, I) and did threaten Donald R. Hanes with arrest unless he made statement against Appellant (Appendix B; Appendix C at B, C, D, E, F, H, I; Appendix D at H; Appendix P at 4, 10; Appendix E; Appendix T). Can anyone doubt, after reading this paragraph and the two immediately preceeding, and their Appendixes, that William P. Metheny was out to incarcerate Appellant on any charge possible, including spitting on the sidewalk. Appellant admits that he has no wings or halo; but Appellant respectfully brings to the Court's attention that despite Metheny's protestation, threats, and actions he was never able to bring any additional charges, or find that Appellant was anything other than what he presented himself to be--a diligent, civic minded hard-working, honest businessman.

On 15 October, 1979 before Magistrate Burdette William P. Metheny, having investigated Appellant's Virginia work record back to 1975 (at least) and having visited Appellant's home and knowing how extensively furnished it was, falsely stated that Appellant had only been in state a very short time, had held only a series of part-time jobs; had used several names (and there was admonished by Magistrate), had no ties to area and had a $500.00 phone bill and Metheny did relieve deputy sheriff assigned to escort Appellant and did himself take Appellant before General District Court and repeat those statements on 16 November, 1979. (Appendix C at C, D, E, F; Appendix D at G; Appendix P at 10; Appendix T).

On 6 December, 1979 William P. Metheny was advised by

Appellant that he was being denied medication and Metheny replied, "Well, remember what I said--you can't get any kind of help unless you're willing to admit to a few things." (Police furnished transcript, Appendix F at A, B). Appellant was questioned without counsel at police initiated interrogation (Edwards v. Arizona, S. Ct. No. 79-5269, May 18, 1981 et al). Appellant was at that time being deprived of Thorazine, Motrin, and was addicted to pain killing drugs and was so deprived from 15 November, 1979 until 23 January 1980. Because of Metheny's action Appellant filed a civil action against William P. Metheny, et al and the Prince William County Police Department pursuant to Title 42 U. S. C. 1983 on 14 July, 1980 in the United States District Court for the Eastern District of Virginia (Civil Action No. 80-825-AM) in the amount of two million dollars. Seeking to escape the consequences of his acts William P. Metheny, in his Return under Rule 4, Federal Civil Procedures, may have committed PERJURY by stating under oath that Appellant had mentioned no medical problems. (Appendix D at J; Appendix F at M).

Mr. John Skiles, who filed the pre-sentence report in the trial court, testified that his information was obtained from William P. Metheny (Sentencing R. T. p. 7 at 3-10). In Mr. Skiles' report there was mention of one of Appellant's military doctors and an indication that this information was obtained from William P. Metheny. There was also an indication that Appellant's military discharge was due to homosexual conduct and this was refuted by Appellant's presentation of his discharges to the Court (Sentencing R. T. p. 12 at 17-23; p. 13 at 1-15). After reading Mr. Skiles' report based upon Metheny's alleged information there is no doubt that William P. Metheny has by some means come into the unlawful possession of Appellant's military medical

records and is busily supplying misinformation. William P. Metheny's mere possession of those records is an invasion of privacy. A person's medical records should be sacrosanct. At the time of Appellant's military service military personnel were forbidden to attend a private physician and were forced to attend military doctors only.

William P. Metheny would have us believe he started his investigation of the Appellant on the word of some mysterious witness whom he declines to identify ever under Rule 4, Federal Civil Procedures. An alleged witness who, very fortuitously, sprung into being fullbloom, like Athena from the forehead of Zeus, coming forward at least six months after he says Appellant supposedly made a homosexual advance to him and then made an impossible identification of Appellant's automobile. (Appendix D at A). This raises a number of unanswerable questions. If this pass was made in the spring of 1979, why did this witness wait six months to come forward; or if the witness did come forward immediately why was Metheny derelict in his duties by not making an immediate investigation? Who is this witness? Why does Metheny hide him? At the time Metheny made this statement Appellant was in jail with Metheny doing his utmost to keep him there. This witness describes the vehicle as being a tan colored vega station wagon but which Metheny describes as being a yellowish-tan (whatever color that may be) Vega hatch-back. Appellant advises the only Vega he has ever owned (or driven) was a yellow Vega hatch-back (Sentencing R. T. p. 24 at -7-19). Additionally, this Vega had, from March, 1978 until September, 1979, possessed unusual and notable external equipment, which was removed by Appellant, and certain highly notable colored markings, which were removed by Kevin Girtz without Appellant's knowledge or consent on 3 September, 1979. Question--How could the so-called witness

identify Appellant's vehicle under those conditions some six months later when he couldn't even describe the color or body style? The Appellant respectfully reminds the Court that there is a vast biological difference between a 19-year old man and a 9-year old boy. Even if this allegation were true, what is the connection with the disappearance of a 9-year old boy when a CORPUS DELICTI of Abduction/Murder has not even been established? If this is William P. Metheny's link to Abduction/Murder it is suggested that the next time there is a sick crime involving a female child he immediately round up all the known, or rumored, heterosexuals (nasty creatures, they'll do anything). Appellant respectfully submits that Metheny's investigation was from this point an unlawful and any information, or alleged information, was illegally obtained.

William P. Metheny is the lucky recipient of a veritable windfall of coincidences. He just happened to take over investigation of Complaint Number D-57920, Missing Person, on 22 October, 1979. He just happened to have this mysterious witness waiting in the wings. He just happened, out of all the police officers available, to have Appellant's Grand Larceny Complaint against Lee James Untercoffer, Jr. assigned to him. He just happened to locate Untercoffer at a time when Untercoffer felt he was in need of some police favour. At Appellant's trial Untercoffer just happened to have had his Grand Larceny charges in the adjacent county (Stafford County, Virginia) reduced to a misdemeanor, just happened to be granted total immunity for his part in an alleged sodomy act, just happened to have the Appellant blocked in all attempts to obtain a Grand Larceny Warrant for him and just happened to be convicted in Spottsylvania County (Virginia) Circuit Court on 8 July, 1981 of arson of his aunt's home and the forceable rape and murder of his 9-year old first cousin.

By raising the ugly spectre of Abduction/Murder William P. Metheny was able to pry into the innermost intimate details of

Appellant's past life and was able to influence Attorneys, Public Officials and private citizens against Appellant. With deliberate disbolical machiavellian logic W. P. Metheny sought to destroy Appellant. By accusing Appellant of an homosexual crime he chose the one crime Appellant's friends and associates would instinctively back away from lest they, by association, be tarred with the same brush. An ill-advised and oppressive law in the hands of an unscrupulous police official.

William P. Metheny seems to think Appellant's interest in handicapped and underprivileged children to be criminally amiss. In which case he had best obtain arrest warrants for every member of the Fraternal Order of Police, its associate members and Ladies Auxillary; the entire Indiana State Sheriff's Association; and nationwide, the Loyal Order of Moose and Women of the Moose. Everyone knows THOSE PEOPLE run orphanages, summer camps and the Police Athletic League for handicapped and underprivileged children. Let us also disinter the notorious Father Flanagan of Boys Town and incarcerate that scoundrel posthumously.

William P. Metheny would put forth that Appellant must have been guilty of some crime because he was something of an enigma and took extraordinary measures to protect his privacy; yet his intensive investigation into Appellant's background, even into his childhood, has resulted in only two charges--one contemptously dismissed, the other our present preoccupation. If a craving for personal privacy were a crime the late eccentric recluse millionaire Howard Hughes would have spent his entire life in prison.

By his actions William P. Metheny shows he was after one person and one person only, James C. Scott. Apparently he was willing to grant immunity to any number of people in order to obtain statements against Appellant. Having knowingly made two

fake arrests he then sought by any means to obtain evidence against Appellant and to coerce a confession from Appellant on any charge, preferrably homosexual. We know his threats forced one person to make a statement, since repudiated, against Appellant, what threats, what inducements procured the testimony of a convicted thief, murderer and admitted homosexual (Appendix (Q) and of a sixteen year old admitted male prostitute against Appellant?

If William P. Metheny ever truly believed Appellant was involved in Abduction/Murder he should be discharged for incompetence. No ept police officer, conducting an investigation into a "possible" crime of such magnitude, would so jeopardize his case by making the statements, unfounded charges, utterances and have committed the blunders of William P. Metheny. By his actions William P. Metheny went beyond the pale. Had Appellant been guilty he would still be entitled to all the constitutional guarantees.

Why, after being told Appellant had consensually engaged in sodomy did William P. Metheny obtain arrest warrant for Appellant, but after being told Lee James Untercoffer, Jr. had committed act of sodomy on Appellant, which was not consensual, do nothing?

American Jurisprudence is based upon two noble concepts: DUE PROCESS OF LAW and an EQUAL PROTECTION OF THE LAWS. Appellant received neither.

Appellant, with a strong conception of right and wrong, believes firmly in law and order, having on numerous occasions come to a police official's aid, but Appellant respectfully asks QUIS CUSTODIET IPSOS CUSTODES?

## CONCLUSION

For all of the ressons aforegoing, Appellant respectfully submits that the judgment of the Trial Court, as affirmed by the Supreme Court of the Commonwealth of Virginia, should be REVERSED.

Respectfully submitted,

James Charles Scott

JAMES CHARLES SCOTT
APPELLANT
IN PROPRIA PERSONA

P. O. Box 823
Evansville, Indiana 47705
Telephone (812) 428-0327

STATE OF INDIANA )
) SS:
COUNTY OF VANDERBURGH )

SUBSCRIBED AND SWORN to before me, a Notary Public, in and for said County and State this 11th day of 1981.

Ruth Van Sickle

Notary Public

My Commission Expires:

April 17, 1985

# VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on* Wednesday *the* 18th *day of* March, 1981.

James Charles Scott, also known as
James Scott, James Charles and
General Chargingwolf, Appellant,

against Record No. 801948
Circuit Court No. C-9254

Commonwealth of Virginia, Appellee.

From the Circuit Court of Prince William County

Finding no reversible error in the judgment complained of, the court refuses the petition for appeal filed in the above-styled case.

The said circuit court shall allow court-appointed counsel the total fee set forth below and also their necessary direct out-of-pocket expenses. And it is ordered that the Commonwealth recover of the appellant the costs in this court and in the court below.

A Copy,

Teste:

Allen L. Lucy, Clerk

By: Deputy Clerk

Costs due the Commonwealth
by appellant in Supreme
Court of Virginia:

| | |
|---|---|
| Attorneys' fee | $350.00 plus their costs and expenses |
| Filing fee | 25.00 |

Teste:

Allen L. Lucy, Clerk

By: Deputy Clerk

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# Supreme Court of the United States

No. A-1007

JAMES CHARLES SCOTT,

Appellant

v.

VIRGINIA

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O R D E R

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UPON CONSIDERATION of the application of the appellant,

IT IS ORDERED that the time for docketing an appeal in the above-entitled case be, and the same is hereby, extended to and including August 15, 1981.

/s/ Warren E. Burger
Chief Justice of the United States

Dated this 12th day of June, 1981.

APPENDIX "B"

FILED
MAY 26, 1981
(confirmed by telephone)

IN THE SUPREME COURT OF THE COMMONWEALTH OF VIRGINIA

JAMES CHARLES SCOTT, Appellant

V. Record No. 801945

COMMONWEALTH of Virginia, Appellee

Notice of Appeal to the Supreme Court of the United States

Notice is hereby given that James Charles Scott, the Appellant above named, hereby appeals to the Supreme Court of the United States from the final order of the Supreme Court of the Commonwealth of Virginia (affirming the judgement of conviction), entered herein on 18 March, 1981.

This appeal is taken pursuant to 28 U.S.C. section 1257(2).

James Charles Scott
James Charles Scott
In Propria Persona
Appellant

c/o Mrs. Mary (Benge) Utley
R. R. 6, Cheshire Drive
Mt. Vernon, Indiana 47620

State of Indiana )
County of Vanderburgh ) ss.

Subscribed and sworn to before me this 21st day of May, 1981.

Ruth Vanstreef
Notary Public

My commission expires:
April 17, 1985

No. _____

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

JAMES CHARLES SCOTT,

APPELLANT

- vs-

COMMONWEALTH OF VIRGINIA,

APPELLEE

NOTIFICATION OF CHALLENGE TO STATE STATUTE

Comes the Appellant, James Charles Scott, in the above entitled case to respectfully advise the Honorable, the Attorney General of the Commonwealth of Virginia, the Appellee, that the constitutionality of 1950 Code of Virginia, as amended, Section 18.2-361 is herein challenged and that the provisions of Title 28 U.S.C. Section 2403(B) may apply.

James Charles Scott

JAMES CHARLES SCOTT
Appellant
IN PROPRIA PERSONA